

PART 1911—RULES OF PROCEDURE FOR PROMULGATING, MODIFYING, OR REVOKING OCCUPATIONAL SAFETY OR HEALTH STANDARDS

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AUTHORITY: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); secs. 1, 4, Walsh-Healey Public Contracts Act (41 U.S.C. 35, 38); secs. 2, 4, Service Contracts Act of 1965 (41 U.S.C. 351, 353); sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); sec. 41, Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941); sec. 5(j)(2), National Foundation on Arts and Humanities Act (20 U.S.C. 954(j)(2)); 5 U.S.C. 553; Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Sections 1911.12 and 1911.18 also issued under 29 CFR part 1911.

SOURCE: 36 FR 17507, Sept. 1, 1971, unless otherwise noted.

§ 1911.1 Purpose and scope.

This part sets forth rules of procedure for promulgating, modifying, or revoking occupational safety or health standards under section 6(b) (1), (2), (3), and (4) of the Williams-Steiger Occupational Safety and Health Act of 1970 and under any of the particular statutes listed in § 1911.2(d) which may also cover the employments affected by the standards. The purpose of the rules is to provide for single proceedings in the setting of standards under the several statutes, in order to assure uniformity of the standards to be enforced under the several statutes and in order to avoid needless multiplicity of rule-

making proceedings dealing with the same subjects and issues relating to occupational safety and health standards.

§ 1911.2 Definitions.

As used in this part, unless the context clearly requires otherwise—

(a) *Assistant Secretary* means the Assistant Secretary of Labor for Occupational Safety and Health.

(b) *Act* means the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590; 29 U.S.C. 650).

(c) *Standard* means an occupational safety and health standard which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary or appropriate to provide safe or healthful employment and places of employment, and which is to be promulgated, modified, or revoked in accordance with section 6(b) (1), (2), (3), and (4) of the Act.

(d) *Particular statute* means any of the following statutes of particular application: The Act of June 30, 1936, commonly known as the Walsh-Healey Public Contracts Act (41 U.S.C. 35 et seq.), the Service Contract Act of 1965 (41 U.S.C. 351 et seq.), the Construction Safety Act (40 U.S.C. 333), the Longshoremen's and Harbor Workers' Compensation Act (33 U.S.C. 941), or the National Foundation on Arts and Humanities Act (20 U.S.C. 951 et seq.).

§ 1911.3 Petition for the promulgation, modification, or revocation of a standard.

Any interested person may file with the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C. 20210, a written petition for the promulgation, modification, or revocation of a standard. The petition should include, or be accompanied by, the proposed rule desired and a statement of the reasons therefor and intended effect thereof.

§ 1911.4 Additional or alternative procedural requirements.

Upon reasonable notice to interested persons, the Assistant Secretary may in any particular proceeding prescribe additional or alternative procedural requirements:

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(a) In order to expedite the conduct of the proceeding;

(b) In order to provide greater procedural protection to interested persons whenever it is found necessary or appropriate to do so; or

(c) For any other good cause which may be consistent with the applicable laws.

§ 1911.5 Minor changes in standards.

Section 6(b), when construed in light of the rulemaking provisions of the Administrative Procedure Act (5 U.S.C. 553), is read as permitting the making of minor rules or amendments in which the public is not particularly interested without the notice and public procedure which is otherwise required. Whenever such a minor rule or amendment is adopted, it shall incorporate a finding of good cause to this effect for not providing notice and public procedure.

[37 FR 8664, Apr. 29, 1972]

COMMENCEMENT OF RULEMAKING

§ 1911.10 Construction standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary shall consult with the Advisory Committee on Construction Safety and Health, established pursuant to section 107 of the Contract Work Hours and Safety Standards Act, in the formulation of a rule to promulgate, modify, or revoke a standard. The Assistant Secretary shall provide the committee with any proposal of his own or the Secretary of Health, Education, and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days from the date of initial consultation.

(b) Within 60 days after the submission of the committee's recommendations or after the expiration of the pe-

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riod prescribed for such submissions, whichever date is earlier, the Assistant Secretary, if he determines that a rule should be issued, shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. The notice shall include:

(1) The terms of the proposed rule;

(2) A reference to section 6(b) of the Act and to section 107 of the Contract Work Hours and Safety Standards Act;

(3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;

(4) The time and place for an informal hearing to be commenced not earlier than 10 days following the end of the period for written comments;

(5) A requirement for the filing of an intention to appear at the hearing, together with a statement of the position to be taken with regard to the proposed rule and of the evidence to be adduced in support of the position;

(6) Designation of a presiding officer to conduct the hearing; and

(7) Any other appropriate provisions pertinent to the proceeding.

(c) Any interested person who files an intention to appear in accordance with paragraph (b) of this section shall have a right to participate at the informal hearing.

(d) In lieu of the procedure prescribed in paragraph (b) of this section, the Assistant Secretary may follow the procedure prescribed in paragraph (b) of § 1911.11 providing an opportunity for informal hearing.

[36 FR 17507, Sept. 1, 1971, as amended at 37 FR 12231, June 21, 1972]

§ 1911.11 Other standards.

The Assistant Secretary may promulgate, modify, or revoke a standard applicable to employments other than those in construction work, as defined in § 1910.12(b) of this chapter, in the following manner:

(a) The Assistant Secretary may request the recommendations of an advisory committee appointed under section 7 of the Act. In such event, the Assistant Secretary shall submit to the committee any proposal of his own or of the Secretary of Health, Education,

and Welfare, together with all pertinent factual information available to him, including the results of research, demonstrations, and experiments. The committee shall submit to the Assistant Secretary its recommendations regarding the rule to be promulgated within the period prescribed by the Assistant Secretary, which in no event shall be longer than 270 days.

(b) The Assistant Secretary shall publish in the FEDERAL REGISTER a notice of proposed rulemaking. Where an advisory committee has been consulted and the Assistant Secretary determines that a rule should be issued, the notice shall be published within 60 days after the submission of the committee's recommendations or the expiration of the period prescribed for such submissions, whichever date is earlier. The notice shall include:

- (1) The terms of the proposed rule;
- (2) A reference to section 6(b) of the Act and to the appropriate section of any particular statute applicable to the employments affected by the rule;
- (3) An invitation to interested persons to submit within 30 days after publication of the notice written data, views, and arguments, which shall be available for public inspection and copying, except as to matters the disclosure of which is prohibited by law;
- (4) Either the time and place of an informal hearing on the proposed rule to be held not earlier than 10 days from the last day of the period for written comments, or information to interested persons that they may file on or before the 30th day after publication of the notice written objections to the proposed rule meeting the requirements of paragraph (c) of this section and request an informal hearing on the objections; and
- (5) Any other appropriate provisions with regard to the proceeding.

(c) Objections to be submitted pursuant to paragraph (b) of this section shall comply with the following conditions:

- (1) The objections must include the name and address of the objector;
- (2) The objections must be postmarked on or before the 30th day after the date of publication of the notice of proposed rulemaking;

(3) The objections must specify with particularity the provision of the proposed rule to which objection is taken, and must state the grounds therefor;

(4) Each objection must be separately stated and numbered; and

(5) The objections must be accompanied by a summary of the evidence proposed to be adduced at the requested hearing.

(d) Within 30 days after the last day for filing objections, if objections are filed in substantial compliance with paragraph (c) of this section, the Assistant Secretary shall, and in any other case may, publish in the FEDERAL REGISTER a notice of informal hearing. The notice shall contain:

- (1) A statement of the time, place, and nature of the hearing;
 - (2) A reference to the authority under which the hearing is to be held;
 - (3) A specification of the provisions of the proposed rule which have been objected to, and on which an informal hearing has been requested;
 - (4) A specification of the issues on which the hearing is to be had, which shall include at least all the issues raised by any objections properly filed, on which a hearing has been requested;
 - (5) The requirement for the filing of an intention to appear at the hearing together with a statement of the position to be taken with regard to the issues specified and of the evidence to be adduced in support of the position;
 - (6) The designation of a presiding officer to conduct the hearing; and
 - (7) Any other appropriate provisions with regard to the proceeding.
- (e) Any objector requesting a hearing on proposed rule, and any interested person who files a proper intention to appear shall be entitled to participate at a hearing.

§ 1911.12 Emergency standards.

(a)(1) Whenever an emergency standard is published pursuant to section 6(c) of the Act, the Assistant Secretary must commence a proceeding under section 6(b) of the Act, and the standard as published must serve as a proposed rule. Any notice of proposed rulemaking shall also give notice of any appropriate subsidiary proposals.

(2) An emergency standard promulgated pursuant to section 6(c) of the

Act shall be considered issued at the time when the standard is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

(b) If the Assistant Secretary wishes to consult an advisory committee on any of the proposals as permitted by section 7(b) of the Act, he shall afford interested persons an opportunity to inspect and copy any recommendations of the advisory committee within a reasonable time before the commencement of any informal hearing which may be held under this part, or before the termination of the period for the submission of written comments whenever an informal hearing is not initially noticed under § 1910.11(b)(4) of this chapter.

(c) Section 6(c) requires that any standard must be promulgated following the rulemaking proceeding within 6 months after the publication of the emergency standard. Because of the shortness of this period, the conduct of the proceeding shall be expedited to the extent practicable.

[37 FR 8664, Apr. 29, 1972, as amended at 42 FR 65166, Dec. 30, 1977]

HEARINGS

§ 1911.15 Nature of hearing.

(a)(1) The legislative history of section 6 indicates that Congress intended informal rather than formal rulemaking procedures to apply. See the Conference Report, H. Rept. No. 91-1765, 91st Cong., second sess., 34 (1970). The informality of the proceedings is also suggested by the fact that section 6(b) permits the making of a decision on the basis of written comments alone (unless an objection to a rule is made and a hearing is requested), the use of advisory committees, and the inherent legislative nature of the tasks involved. For these reasons, the proceedings pursuant to § 1911.10 or § 1911.11 shall be informal.

(2) Section 6(b)(3) provides an opportunity for a hearing on objections to proposed rulemaking, and section 6(f) provides in connection with the judicial review of standards, that deter-

minations of the Secretary shall be conclusive if supported by substantial evidence in the record as a whole. Although these sections are not read as requiring a rulemaking proceeding within the meaning of the last sentence of 5 U.S.C. 553(c) requiring the application of the formal requirements of 5 U.S.C. 556 and 557, they do suggest a congressional expectation that the rulemaking would be on the basis of a record to which a substantial evidence test, where pertinent, may be applied in the event an informal hearing is held.

(3) The oral hearing shall be legislative in type. However, fairness may require an opportunity for cross-examination on crucial issues. The presiding officer is empowered to permit cross-examination under such circumstances. The essential intent is to provide an opportunity for effective oral presentation by interested persons which can be carried out with expedition and in the absence of rigid procedures which might unduly impede or protract the rulemaking process.

(b) Although any hearing shall be informal and legislative in type, this part is intended to provide more than the bare essentials of informal rulemaking under 5 U.S.C. 553. The additional requirements are the following:

(1) The presiding officer shall be a hearing examiner appointed under 5 U.S.C. 3105.

(2) The presiding officer shall provide an opportunity for cross-examination on crucial issues.

(3) The hearing shall be reported verbatim, and a transcript shall be available to any interested person on such terms as the presiding officer may provide.

[37 FR 8664, Apr. 29, 1972, as amended at 37 FR 12231, June 21, 1972]

§ 1911.16 Powers of presiding officer.

The officer presiding at a hearing shall have all the powers necessary or appropriate to conduct a fair and full hearing, including the powers:

(a) To regulate the course of the proceedings;

(b) To dispose of procedural requests, objections, and comparable matters;

(c) To confine the presentations to the issues specified in the notice of

hearing, or, where no issues are specified, to matters pertinent to the proposed rule;

(d) To regulate the conduct of those present at the hearing by appropriate means;

(e) In his discretion, to permit cross-examination of any witness;

(f) To take official notice of material facts not appearing in the evidence in the record, so long as parties are entitled, on timely request, to an opportunity to show the contrary; and

(g) In his discretion, to keep the record open for a reasonable, stated time to receive written recommendations, and supporting reasons, and additional data, views, and arguments from any person who has participated in the oral proceeding.

§ 1911.17 Certification of the record of a hearing.

Upon completion of the oral presentations, the transcript thereof, together with written submissions on the proposed rule, exhibits filed during the hearing, and all posthearing comments, recommendations, and supporting reasons shall be certified by the officer presiding at the hearing to the Assistant Secretary.

§ 1911.18 Decision.

(a)(1) Within 60 days after the expiration of the period provided for the submission of written data, views, and arguments on a proposed rule on which no hearing is held, or within 60 days after the certification of the record of a hearing, the Assistant Secretary shall publish in the FEDERAL REGISTER either an appropriate rule promulgating, modifying, or revoking a standard, or a determination that such a rule should not be issued. The action of the Assistant Secretary shall be taken after consideration of all relevant matter presented in written submissions and in any hearings held under this part.

(2) A determination that a rule should not be issued on the basis of existing relevant matter may be accompanied by an invitation for the submission of additional data, views, or arguments from interested persons on the issue or issues involved. In which event, an appropriate rule or other de-

termination shall be made within 60 days following the end of the period allowed for the submission of the additional comments.

(b) Any rule or standard adopted under paragraph (a) of this section shall incorporate a concise general statement of its basis and purpose. The statement is not required to include specific and detailed findings and conclusions of the kind customarily associated with formal proceedings. However, the statement will show the significant issues which have been faced, and will articulate the rationale for their solution.

(c) Where an advisory committee has been consulted in the formulation of a proposed rule, the Assistant Secretary may seek the advice of the advisory committee as to the disposition of the proceeding. In giving advice to the Assistant Secretary, an advisory committee shall consider all matter presented to the Assistant Secretary. The advice of an advisory committee shall take the form of written recommendations to be submitted to the Assistant Secretary within a period to be prescribed by him. When the recommendations are contained in the transcript of the meeting of an advisory committee, they shall be summary in form. See §§ 1912.33 and 1912.34 of this chapter.

(d) A rule promulgating, modifying, or revoking a standard, or a determination that a rule should not be promulgated, shall be considered issued at the time when the rule or determination is officially filed in the Office of the Federal Register. The time of official filing in the Office of the Federal Register is established for the purpose of determining the prematurity, timeliness, or lateness of petitions for judicial review.

[37 FR 8665, Apr. 29, 1972, as amended at 42 FR 65166, Dec. 30, 1977]

PART 1912—ADVISORY COMMITTEES ON STANDARDS

Sec.

1912.1 Purpose and scope.

ORGANIZATIONAL MATTERS

1912.2 Types of standards advisory committees.